GOVERNMENT OF MYSORE.

LABOUR AND MUNICIPAL ADMINISTRATION DEPARTMENT (LABOUR).

Labour Dispute.—Industrial Dispute between the Workmen and the Management of the Proprietor M/s. N M. S. Lady Hill, Mangalore.

Award of the Labour Court, Bangalore—Published.

Read the following papers:—

1. Letter No. 1365/66-67, dated 30th January 1967, from Shri P. T. Kadkol, Presiding Officer, Labour Court, Bangalore.

BEFORE THE PRESIDING OFFICER, LABOUR COURT, BANGALORE.

Dated this 30th day of January 1967.

Present

Sri P. T. Kadkol, B.Sc., LL.B.

Presiding Officer,

Reference No. 53 of 1966.

Between

Workmen represented by the Secretary, Karnataka Automobile and Engineering Workers' Union, Maidan Cross Road, Mangalore ... *I Party*

and

The Management of the Proprietor, M/s. N.M.S. Lady Hill Mangalore. ... ... *II Party*.

Reference.

(Government Order No. LMA 161 LLD 66, dated 23rd May 1966.

AWARD

The Government of Mysore being of opinion that an industrial dispute exists between the workmen and the management of M/s. N. M. S. Mangalore have referred it to this Court unde Section 10 (1) (c) of the Industrial Disputes Act, 1947 for adj

cation by their Order No. LMA 161 LLD 66 dated the 23rd May 1966, setting out the following points of dispute for adjudication:—

I. "Is Sri Xavier D' Souza, driver of M/s. Sri N.M.S., Mangalore entitled to re-instatement with continuity of service and back wages.

II. If not to what other reliefs the workman is entitled to"

2. The cause of the aggrieved workman has been sponsored by the Karnataka Automobile and Engineering Workers' Union, Mangalore which is a registered trade union. This Union as representing the workmen is the first party and the management of M/s. N.M.S. is the second party in this proceeding. The first party is represented by Mr. Vittal Shetty and the second party by Sri K. Damodar Shenoy.

3. The second party is an establishment doing the business of transport contractors and bus operators. The aggrieved workman, D'Souza was employed by the management as a bus or truck driver. He was in the service of the management for some years. It appears, however, that D'Souza's career was not good. There were some lapses on his part and they are borne out by the documents produced in this case by the management and which are admitted by the first party union. The first lapse on record was on 7th September 1963. On that day, perhaps to a qurrey put in by the management, D'Souza has given the note at Ex.M.4. Therein he has stated that as he was suffering from a disease, he had taken some intoxicant in his medicine and it was wrong on his part to have attended office on that day after having consumed the intoxicant. He has requested the management to excuse him. Then it appears that on 2nd May 1964 he remained absent from duty without permission or leave. In this connection he has given the report Ex. M. 2 dated 3rd May 1964 to the management praying that he may be excused. Then on 17th July 1964, he has given the report at Ex. M 3 to the management stating that
had dashed the vehicle against an electric light pole when
ng to avoid another vehicle. For this act, the management
iven him a warning. Then again he was involved in a
accident. When he was driving the vehicle on 11th June
ter consuming an intoxicant, he dashed the vehicle against
cart. This resulted in heavy damage to the cart and
ks, as also the vehicle. For this accident caused by him
ge-sheeted by the Police before the Sub-Divisional
He admitted his guilt before the Magistrate. The

learned Magistrate convicted him and sentenced him to pay a fine of Rs. 25. Thereafter the same matter was taken up by the Regional Transport Officer, Mangalore. He issued a notice to D'Souza asking him to show cause why action should not be taken against him for causing the accident. D'Souza appeared before him and took part in the enquiry. The Regional Transport Officer, at the conclusion of the enquiry, passed an order on 16th December 1964 suspending his (D'Souza's) driving licence for a period of 30 days observing that his (D'Souza's) driving was dangerous to the public.

4. On account of the order passed by the Regional Transport Officer, D'Souza could not drive the vehicle for at least 30 days. It appears that the management was not satisfied with the work of D'Souza, his negligence and his habitual consumption of intoxicants. Hence it passed an order on 29th December 1964 dismissing him from service. It is this order of dismissal that has given rise to the present dispute.

5. In response to the notice issued by this court, the Union has submitted its statement of claims. The Union has asserted therein that D'Souza was dismissed without any charge being framed against him, without holding any enquiry and without giving him any opportunity for defending himself. It has attacked the order of dismissal as unjust, improper and illegal and has asked this court to direct the management to reinstate him with full back wages and continuity of service.

6. The management has submitted its statement of objections. It has set out the various grounds mentioned by me in para 3 above as reasons compelling it to dismiss him. It has urged that since it has dismissed D'Souza on justifiable and reasonable grounds, he is not entitled to be reinstated.

7. On these pleadings the following issues have been framed and set down for hearing (*Vide* Order Sheet dated 13th September 1966) :—

(1) Whether the referred dispute is an industrial dispute ?

(2) If not, has this court jurisdication to adjudicate upon it ?

(3) Does the Management of the Second Party prove that it is justified in terminating the services of the aggrieved workman on the grounds set out in the written statement ?

(4) Are these grounds proved by it?

(5) To what relief, if any, is the aggrieved workman entitled to?

8. The dispute was fixed for hearing at Mangalore on 16th November 1966. On that day, documents produced by the management were admitted by the Union and the documents produced by the union were admitted by the Management. It was also stated by the learned representative of the second party Management that he would not press the first issue. So a finding was recorded on the first issue in the affirmative as a result of which the second issue did not survive. Since the documents produced by each party were admitted by the other party, no oral evidence was led by either party. This fact has been noted down by me in the order sheet dated 16th November 1966 under the signatures of the learned representatives of both parties.

9. Thereafter the learned representatives of both parties argued the case before me on 19th November 1966.

10. Now the question is whether the order of dismissal passed by the Management against the aggrieved workman D'Souza should be maintained or should be set aside. It is true that no domestic enquiry has been held by the Management against D'Souza by issuing a chargesheet against him. That by itself, however, would not make the impugned order vulnerable. The management has a right to adduce evidence before this court to prove the grounds which led it to pass the impugned order. This the management has done in this case. I have sat out in para 3 above the various lapses on the part of D'Souza. On his own admission, he appears to be in the habit of taking intoxicants. I need hardly say that it is very risky and dangerous to the members of the public that a motor vehicle should be in charge of a driver who is under the influence of intoxicants. Such a thing has in fact taken place on 11th June 1964. D'Souza has dashed his vehicle against a bullock cart causing damage to it as also to the vehicle. D'Souza has not led any evidence before me to show that the accident was caused for reasons other than those enumerated in the order passed by the learned Regional Transport Officer. From that letter, it appears that the accident had taken place because D'Souza was under the influence of intoxicants. Even if we ignore for a moment the early lapses on his part, I do not think that the

accident committed by him on 11th June 1964 can be lightly brushed aside. No wonder that the management thought it unsafe to continue D'Souza in service any further and place the vehicle in his charge and risk further accidents and involvement of itself in civil and criminal litigations. Moreover the management could not allow D'Souza to drive any vehicle for 30 days. It could not suspend its own activities or keep any vehicle idle. It would be too much to expect of the management to make alternative arrangements for 30 days and then take back D'Souza in service. In the dismissal order Ex. W. 2, the manage- has set out the lapses on the part of D' Souza in general terms and has specifically referred to the order passed by the learned Regional Transport Officer and said that for all those reasons it had terminated the services of D'Souza. When the documents and the facts contained therein are admitted, I have to record my findings on the 3rd and the 4th issues in the affirmative. If it is done, it follows that the management had reasonable grounds for terminating the services of D'Souza and the impugned order passed by it is fully justifiable and legal. No evidence has been placed before me to show that the action taken by the management in dismissing D'Souza is prompted by a sense of victimisation or unfair labour practice. For all these reasons, therefore, I maintain the order passed by the management dismissing D'Souza from service.

11. In the result therefore it follows that D'Souza is not entitled to any reliefs at the bands of this court. Hence I proceed to make the following award.

AWARD.

The Reference is rejected. The demand made by D'Souza and the first party union on his behalf is also rejected. Parties do bear their own costs.

P. T. KADKOL,
Presiding Officer,
Labour Court, Bangalore.

ORDER.

Bangalore, dated 8th February 1967.

S. O. 367.—WHEREAS by State Government Order No. PLM 161 LLD 66, dated 23rd May 1966, the Industrial Dispute between the Workmen and the Management of the Proprietor, M/s. N. M. S. Lady Hill, Mangalore was referred to the Labour Court, Bangalore for adjudication;

AND WHEREAS the Labour Court has submitted to the State Government its award in respect of the said Industrial Dispute;

NOW, THEREFORE, in exercise of the powers conferred by Section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), the Government of Mysore are pleased to direct the publication of the said award as above, in the *Mysore Gazette*.

[No. LMA 161 LLD 66]

By Order and in the name of the Governor of Mysore.

2792 G. G. PUROHIT, *Under Secy.*